IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

WP(C).No. 8866 of 2007(E)

PETITIONER:

R.RAJA GOPALAN,
S/O.KRISHNAN CHETTIYAR, RTD. ASSISTANT SECRETARY,
HIGH COURT AUDIT SECTION, TRAVANCORE DEVASWOM
BOARD, RESIDING AT: SUDHA, VP 4/1176, SNRA-93A,
SOORYA NAGAR, NETTAYAM P.O. THIRUVANANTHAPURAM.

BY ADV. SRI.G.SUDHEER

RESPONDENTS:

TRAVANCORE DEVASWOM BOARD,
REPRESENTED BY IT'S SECRETARY,
DEVASWOM BOARD OFFICE, THIRUVANANTHAPURAM.

BY SC SHRI. M.K. CHANDRAMOHAN DAS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K. DENESAN, J.

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W.P.(C) No. 8866 OF 2007 E

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Dated this the 28th March, 2007

J U D G M E N T

The petitioner retired from the service of the respondent-Board, on 31-3-2004, while working as Assistant Secretary. The grievance sought to be redressed through this writ petition pertains to the non-payment of commuted value of pension due to him. The respondent has not accorded sanction for payment of commuted value of pension. According to the petitioner, he is entitled to commute his pension in accordance with the rules and upon such commutation he is entitled to receive the amount thus sanctioned, immediately on his retirement.

2. The respondent has filed a counter affidavit. The respondent states that but for a vigilance enquiry pending against the petitioner, the entire terminal benefits including commuted value of pension would have been paid to him, by this time. Ext. R1(b) communication received from the Vigilance and Anti-

corruption Bureau, Thiruvananthapuram addressed to the Secretary of the respondent shows that "no vigilance case is pending against the petitioner". What is going on is a vigilance enquiry. Ext. R1(b) further says that that enquiry may or may not result in the registration of a case. As matters now stand, the vigilance is not in a position to express any definite opinion as to what would be the outcome of the vigilance enquiry.

3. Counsel for the petitioner submits that pendency of the vigilance enquiry will not come within the purview of the expression 'judicial proceeding' in Rule 3A(a) of Part III of Kerala Service Rules, and therefore, the respondent is acting illegally by its refusal to sanction the commuted value of pension, thereby depriving the petitioner of a substantial amount he is entitled to, towards terminal benefits. Rule 3A(a) aforesaid reads:

> "Rule 3-A.(a) Where any departmental or judicial proceeding is instituted under Rule 3 or where a departmental proceeding is continued under clause (a) of the proviso thereto, against an employee who has retired

on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension, but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon."

4. Counsel for the respondent submits that the amount is withheld in the light of the communication received from the Vigilance and Anti-Corruption Bureau to the effect that enquiry into alleged misappropriation of funds is going on.

5. Heard both sides.

6. The only question for consideration is whether the petitioner who retired from service on 31-3-2004 is entitled to get commuted value of pension and whether there is legal sanction for withholding that amount. It is not disputed that the service rendered by the

petitioner is pensionable, and further, that he is entitled to commute a portion of the pension sanctioned to him. However, the respondent-Board would argue that it is justified in withholding payment of the same, pending vigilance enquiry.

7. Now 3 years have elapsed since the retirement of the petitioner. Rule 3 of Part III, K.S.Rs. empowers the respondent to withhold D.C.R.G. pending enquiry into allegations involving any pecuniary loss sustained by the Board by the negligence or other culpable action or omission on the part of its employees or pensioners. Even in such cases the liability shall be fixed after notice to them within a maximum period of 3 years from the date of retirement of the employee. The respondent has no case that action under Rule 3 has been taken or is pending against the petitioner. The only provision on which reliance can be placed by the respondent is Rule 3A(a) of Part III, K.S.R. If departmental proceedings had been instituted and the same is continued, the above mentioned rule empowers the respondent to withhold

terminal benefits including D.C.R.G., commuted value of pension and even pension. The retired employee will be entitled to receive only a provisional pension. But, the said Rule will be attracted only in cases where departmental or judicial proceedings have been instituted and are pending against the retired employee. Admittedly, no departmental proceedings are pending. What is pending is a vigilance enquiry. The vigilance has not registered a crime case and has not commenced any investigation as contemplated by the provisions of the Code of Criminal Procedure. 'Vigilance enquiry' will not come, even remotely, within the ambit of the expression judicial proceedings.

8. Therefore, it is evident that no judicial proceeding has either been instituted or is pending against the petitioner. The resultant position is that the petitioner is entitled to demand that the respondent shall pass orders sanctioning commuted value of pension and that the amount thus sanctioned shall be disbursed to him. It is so declared.

9. The writ petition is allowed. There shall be an order directing the respondent to sanction and disburse the commuted value of pension legitimately due to the petitioner, as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of the judgment.

K.K. DENESAN
JUDGE

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